

**COMMISSION ON COMMON OWNERSHIP COMMUNITIES
FOR MONTGOMERY COUNTY, MARYLAND**

In the matter of:

JOHN AND JEANINE WALKER
12922 Summit Ridge Terrace
Germantown, Maryland 20874

Case No. 450-O

Complainant,

vs.

GERMANTOWN STATION
HOMEOWNERS ASSOCIATION
6411 Ivy Lane, Suite 414
Greenbelt, Maryland 20770-1405

Respondent.

DECISION AND ORDER

The above-entitled case, having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, pursuant to sections 10B-5(I), 10B-9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code as amended, and the Commission having considered the testimony and other evidence of record, it is therefore this 30th day of June 2000 found, determined, and ordered as follows:

BACKGROUND

On January 29, 1999, the Complainants requested permission of the Germantown Station Homeowners Association's (hereinafter, "HOA") Architectural Control Committee to erect a picket fence around the rear perimeter of their property. The application was denied on February 9, 1999, by Mr. Mark Brewer, chair of the architectural control committee. On February 28, 1999, the Complainants resubmitted to the HOA's Architectural Control

Committee a letter requesting reconsideration of the denial of approval, setting forth a specific design of the type of picket fence the Complainants desired, to wit, a "dog ear" type picket fence. On April 26, 1999, Mr. Brewer again denied the Complainants' application. The Complainants requested a hearing before the Board of Directors to appeal the decision of the Architectural Control Committee by a letter dated April 30, 1999. The Board of Directors scheduled an appeal hearing for June 15, 1999, and as a result of that hearing affirmed the decision of the HOA's Architectural Control Committee with regard to the Complainant's application.

FINDINGS OF FACT

1. The Complainants, John and Jeanine Walker, reside at 12922 Summit Ridge Terrace, Germantown, Maryland, and are members of the Homeowners Association of Germantown Station.
2. The Declaration of Covenants, Conditions and Restrictions for Germantown Station was recorded among the land records for Montgomery County on December 15, 1994, at Liber 13143, Folio 615.
3. Developer control of the HOA ceased in April 1998, and in June 1998 the Board of Directors retained the property management services of Chambers Management, Inc.
4. Since the time the Homeowners Association assumed control of the HOA, no approvals have been given by the architectural control committee for the construction of a picket fence. The only picket fence in the entire HOA (which was approved by the developer-controlled Board of Directors) is located in an entirely different part of the community, and was not situated in a location

anywhere near the property of the Complainants or its street neighborhood in general.

5. The Respondents admit that no one received any written notice of any meeting of the Architectural Control Committee with respect to the April 25, 1999 meeting wherein the Complainants' application for reconsideration was denied.
6. Notice to homeowners of the HOA was issued on or about June 8, 1999 that a Board of Directors meeting to consider the appeal of the Architectural Control Committee's decisions would be held on June 15, 1999, at 7:00 p.m.
7. At this meeting, the Complainants appeared and appealed to the Board of Directors to overturn the decision of the ACC and were provided a full opportunity to detail their reasons before the full Board of Directors.
8. Article V of the Declaration of Covenants, Conditions and Restrictions of Germantown Station Homeowners' Association, Inc., sets forth the manner in which architectural changes to the property shall be approved. Section 5.01 (Exhibit 1, page 47) states as follows:

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made (including change in color) until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing

as to harmony of external design and location in
relation to surrounding structures and topography
and conformity with the design concept for the
Property by the Board of Directors of the
Association....

Article VI of the Declaration of Covenants, Conditions and Restrictions of the
Germantown Station Homeowners' Association, Inc., section 6.02(g) (Exhibit
1, page 51) provides in part as follows:

Without limiting the generality of the foregoing,
no wire or other lawn edging, fencing, or other
treatment shall be placed or maintained on any
Lot which would be inharmonious with the
aesthetics of the community of which it is a part.

Respondent's Exhibit Numbers 10 and 11, accepted by the Panel during the
hearing, clearly show that all of the rear yards in that block having fencing
unmistakably have consistent split rail fencing design, constructed in a manner
such that the design is harmonious and aesthetically appealing.

9. Adjacent property owners to the Complainants had received approval for the
construction of split rail fencing such that the fencing would share a common
property line with the Complainants.
10. Complainants concede that there are no picket fences in or about the
surrounding neighborhood to their lot. Further, Complainants concede that
back-to-back fencing of split rail to picket fencing would have ensued had the

Board of Directors overturned the decision of the ACC with regard to
Complainants' application.

11. That the Architectural Control Committee received objections from neighbors
in the community opposing changing the standard from three post split rail fencing. (See
Respondents Exhibit 12.)

CONCLUSIONS OF LAW

Accordingly, the Commission concludes, based upon the preponderance of the
evidence, and after full and fair consideration of the evidence of the record, that:

1. The Board of Directors of the HOA did not act in an arbitrary or a capricious
manner in exercising its discretion to let stand the decision of the HOA's
Architectural Control Committee's decision to deny the Complainants' request
for the construction and erection of a picket fence on the perimeter of three
sides of its rear yard.
2. Although the Architectural Control Committee's meeting of April 25, 1999
was held without written notice having been sent to the HOA community, the
panel finds that Complainants would have provided no evidence to the ACC in
addition to that which they provided to the Board at the Board of Directors
meeting of June 15, 1999.
3. The picket fence of the type and nature applied for by the Complainants was
inharmonious in design and in location in relationship to the surrounding
structures and fences existing or approved for construction. Further, the Panel
finds by a preponderance of the evidence, that the construction and
maintenance of a picket fence on three sides of the Complainants' rear yard

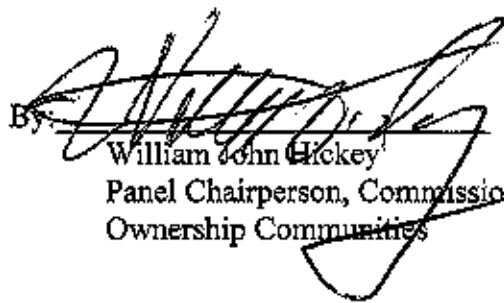
would be inharmonious with the aesthetics of the community and present a "back-to-back" fencing relationship with the Complainants' adjacent neighbors.

ORDER

In view of the foregoing, and based upon the evidence of the record, the Commission orders that:

1. The Complainants' request that the HOA approve the installation of a picket fence on three sides of the Complainants' backyard be hereby denied; and
2. The Respondent shall provide written notice of any meeting of the members to each member entitled to vote thereat at least 72 hours before any such meeting.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland, within 30 days from the date of this Order pursuant to the Maryland Rules governing administrative appeals. The foregoing was concurred in by panel members Gaffigan, Murphy and Hickey.

By: 
William John Hickey
Panel Chairperson, Commission on Common
Ownership Communities